

# SENATE BILL No. 558

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.3-9.5; IC 21-14-6; IC 36-8-8.

**Synopsis:** Public safety disability benefits. Provides for the payment of a catastrophic disability benefit to an individual: (1) who has a permanent and total disability from a catastrophic personal injury that is sustained in the line of duty as a member of the 1977 police officers' and firefighters' pension and disability fund (1977 fund) or as a sheriff, deputy sheriff, or town marshal in the public employees' retirement fund (PERF) after December 31, 2007, and that permanently prevents the individual from performing any gainful work; and (2) who was employed as a full-time public safety officer at the time the individual suffered the disability. Provides that in the case of a sheriff, deputy sheriff, or town marshal who is a member of PERF: (1) the PERF board shall make the determination concerning whether an individual is entitled to a catastrophic disability benefit; and (2) the catastrophic disability benefit is payable from PERF. Provides that a medical authority selected by the PERF board shall make a recommendation to the board concerning whether an applicant for a catastrophic disability benefit has a permanent and total disability from a catastrophic personal injury that permanently prevents the applicant from performing any gainful work. Provides that a determination by the PERF board may be appealed under the administrative orders and procedures act. Provides that in the case of a member of the 1977 fund: (1) the local pension board shall make a determination (for members covered under the 1990 disability system) or a recommendation to the 1977 fund advisory committee (for members covered under the pre-1990 disability system) of whether the fund member's impairment is a catastrophic disability; (2) the PERF board's director (for members

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**Effective:** January 1, 2008 (retroactive).

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January 20, 2009, read first time and referred to Committee on Pensions and Labor.



covered under the 1990 disability system) or the 1977 fund advisory committee (for members covered under the pre-1990 disability system) shall make a final determination regarding whether an individual is entitled to a catastrophic disability benefit; and (3) the catastrophic disability benefit is payable from the 1977 fund. Specifies that the annual amount of an individual's catastrophic disability benefit is equal to the difference between: (1) the salary of a first class patrolman or first class firefighter (in the case of a member of the 1977 fund) or the individual's regular annual salary as a sheriff, deputy sheriff, or town marshal, in the case of an individual who is a member of PERF; minus (2) the sum of any annual salary, wages, or disability benefits paid (or to be paid) to the individual by the individual's public safety employer or by the public pension plan or public pension fund of which the individual is a member, including any Social Security disability benefits paid to the individual. Specifies that a catastrophic disability benefit may be paid only until: (1) the date on which the individual becomes 65 years of age, in the case of a member of PERF; or (2) the date on which the individual attains the age and years of service necessary for the individual to receive an unreduced annual retirement benefit, in the case of a member of the 1977 fund. Provides that a child or surviving spouse of an individual who is receiving a catastrophic disability benefit or was receiving a catastrophic disability benefit at the time of the individual's death is not required to pay educational costs at a state educational institution or state supported technical school.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 558

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-10.3-9.5 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2008 (RETROACTIVE)]:

4 **Chapter 9.5. Catastrophic Disability Benefits**

5 **Sec. 1. As used in this chapter, "eligible public safety officer"**  
6 **means a:**

- 7 (1) county sheriff;  
8 (2) deputy sheriff; or  
9 (3) town marshal;

10 **who is a member of the fund.**

11 **Sec. 2. A catastrophic disability benefit shall be paid from the**  
12 **fund as provided in this chapter to each individual who:**

- 13 (1) has a permanent and total disability from a catastrophic  
14 personal injury that:  
15 (A) is sustained in the line of duty as an eligible public  
16 safety officer after December 31, 2007; and  
17 (B) permanently prevents the individual from performing

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any gainful work; and  
 (2) was employed as a full-time eligible public safety officer at the time the individual suffered the disability described in subdivision (1).

**Sec. 3.** If the board receives an application for the payment of a catastrophic disability benefit to an individual, a medical authority selected by the board shall make a recommendation to the board concerning whether the individual has a permanent and total disability from a catastrophic personal injury that permanently prevents the individual from performing any gainful work. The board shall pay the costs incurred by the medical authority in performing any necessary review and in making the recommendation. After receiving a recommendation from the medical authority, the board shall make a determination concerning whether the individual is entitled to a catastrophic disability benefit from the fund. A determination by the board may be appealed under IC 4-21.5.

**Sec. 4.** The following apply if the board determines that an individual is entitled to a catastrophic disability benefit from the fund:

(1) The annual amount of the individual's catastrophic disability benefit is equal to the result of:

(A) the individual's regular annual salary as an eligible public safety officer at the commencement of the disability (as adjusted under subdivision (2)); minus

(B) the sum of the following:

(i) Any annual salary or wages paid (or to be paid) for the year to the individual by the individual's public safety employer.

(ii) The annual disability benefits paid (or to be paid) for the year to the individual by or on behalf of the individual's public safety employer or by the fund.

(iii) Any benefits paid (or to be paid) for the year to the individual under a disability insurance policy purchased or provided by the individual's public safety employer.

(iv) Any Social Security disability benefits paid (or to be paid) for the year to the individual.

(2) For purposes of calculating a catastrophic disability benefit under subdivision (1), the amount used as the individual's regular annual salary as an eligible public safety officer for purposes of subdivision (1)(A) shall be increased each calendar year based on any increase in the consumer

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price index (United States city average) prepared by the United States Department of Labor for the twelve (12) month period ending June 30 of the preceding year.

(3) An individual is not entitled to a catastrophic disability benefit if the amount determined for the individual under subdivision (1)(B) exceeds the amount determined for the individual under subdivision (1)(A).

**Sec. 5.** If an individual is entitled to a catastrophic disability benefit, the benefit is payable from the date of the injury described in section 2(1) of this chapter until the earliest of the following:

(1) The date the board determines that the individual no longer suffers from a permanent and total disability from a catastrophic personal injury that permanently prevents the individual from performing any gainful work.

(2) The date on which the individual becomes sixty-five (65) years of age.

(3) The date of the individual's death.

**Sec. 6.** A catastrophic disability benefit shall be paid each year in one (1) annual payment.

**Sec. 7.** The board may at any time hold a hearing to determine whether an individual who is receiving a catastrophic disability benefit remains eligible under this section for that benefit.

SECTION 2. IC 21-14-6-1, AS ADDED BY P.L.2-2007, SECTION 255, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 1. This chapter applies to the following:

(1) The children and surviving spouse of a public safety officer if the public safety officer was a resident of Indiana when killed in the line of duty.

(2) The children and surviving spouse of an individual who is receiving a catastrophic disability benefit under IC 5-10.3-9.5 or IC 36-8-8-14.5 or was receiving a catastrophic disability benefit under IC 5-10.3-9.5 or IC 36-8-8-14.5 at the time of the individual's death.

SECTION 3. IC 21-14-6-2, AS ADDED BY P.L.2-2007, SECTION 255, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 2. The children of:

(1) a public safety officer who has been killed in the line of duty;  
or

(2) an individual who is receiving a catastrophic disability benefit under IC 5-10.3-9.5 or IC 36-8-8-14.5 or was receiving a catastrophic disability benefit under IC 5-10.3-9.5 or

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**IC 36-8-8-14.5 at the time of the individual's death;**

are not required to pay educational costs at a state educational institution or state supported technical school, so long as the children are less than twenty-three (23) years of age and are full-time students pursuing a prescribed course of study.

SECTION 4. IC 21-14-6-3, AS ADDED BY P.L.2-2007, SECTION 255, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 3. The surviving spouse of:

(1) a public safety officer who has been killed in the line of duty;  
or

(2) an individual who is receiving a catastrophic disability benefit under IC 5-10.3-9.5 or IC 36-8-8-14.5 or was receiving a catastrophic disability benefit under IC 5-10.3-9.5 or IC 36-8-8-14.5 at the time of the individual's death;

is not required to pay educational costs at a state educational institution or state supported technical school, as long as the surviving spouse is pursuing a prescribed course of study at the institution towards an undergraduate degree.

SECTION 5. IC 36-8-8-12.5, AS AMENDED BY P.L.62-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

- (i) an offense or a reported offense, in the case of a police officer; or
- (ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A

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covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is:

(A) a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause; or

(B) a health condition caused by:

(i) an exposure related heart or lung disease; or

(ii) an exposure related cancer;

that results in a presumption of disability incurred in the line of duty under IC 5-10-15.

(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

**(4) Whether:**

**(A) the fund member's impairment is a permanent and total disability from a catastrophic personal injury that:**

**(i) is sustained in the line of duty as a police officer or firefighter after December 31, 2007; and**

**(ii) permanently prevents the individual from performing any gainful work; and**

**(B) the fund member was employed as a full-time police officer or firefighter at the time the individual suffered the disability described in clause (A).**

SECTION 6. IC 36-8-8-12.7, AS AMENDED BY P.L.29-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12.7. (a) This section applies to hearings conducted by local boards concerning

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determinations of impairment under this chapter or of disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(b) At least five (5) days before the hearing, the local board shall give notice to the fund member and the safety board of the time, date, and place of the hearing.

(c) The local board must hold a hearing not more than ninety (90) days after the fund member requests the hearing.

(d) At the hearing, the local board shall permit the fund member and the safety board to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

(e) At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

(f) The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

(i) If the local board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment. The PERF board shall review an impairment determined under this subsection as provided in section 13.1 of this chapter.

(j) The local board may on its own motion issue:

- (1) subpoenas;

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(2) discovery orders; and

(3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination of the local board after a hearing is final and may be appealed to the court.

(o) With respect to a hearing conducted for purposes of determining impairment or class of impairment under this chapter, the fund member may appeal the local board's determinations. An appeal under this subsection:

(1) must be made in writing;

(2) must state the class of impairment and the degree of impairment that is claimed by the fund member;

(3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and

(4) must be filed with the local board and the PERF board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations.

(p) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

(1) retained in the separate medical file created for the member; and

(2) treated as a confidential medical record.

(q) If a local board determines that a fund member described in

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section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the 1977 fund advisory committee concerning **the following:**

(1) Whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter.

(2) **Whether:**

(A) **the fund member's impairment is a permanent and total disability from a catastrophic personal injury that:**

(i) **is sustained in the line of duty as a police officer or firefighter after December 31, 2007; and**

(ii) **permanently prevents the individual from performing any gainful work; and**

(B) **the fund member was employed as a full-time police officer or firefighter at the time the individual suffered the disability described in clause (A).**

The local board shall forward its recommendation to the 1977 fund advisory committee.

(r) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of:

(1) whether the disability is in the line of duty or not in the line of duty; **and**

(2) **whether the fund member's impairment is a permanent and total disability from a catastrophic personal injury described in subsection (q)(2).**

The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(s) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

SECTION 7. IC 36-8-8-13.1, AS AMENDED BY P.L.29-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 13.1. (a) If:

(1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined

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1 that there is no suitable and available work within the department,  
 2 considering reasonable accommodation to the extent required by  
 3 the Americans with Disabilities Act; or

4 (2) the fund member has filed an appeal under section 12.7(o) of  
 5 this chapter;

6 the local board shall submit the local board's determinations and the  
 7 safety board's determinations to the PERF board's director.

8 (b) Whenever a fund member is determined to have an impairment  
 9 under section 12.7(i) of this chapter, the PERF board's director shall  
 10 initiate a review of the default award not later than sixty (60) days after  
 11 the director learns of the default award.

12 (c) After the PERF board's director receives the determinations  
 13 under subsection (a) or initiates a review under subsection (b), the fund  
 14 member must submit to an examination by a medical authority selected  
 15 by the PERF board. The authority shall determine if there is a covered  
 16 impairment. With respect to a fund member who is covered by sections  
 17 12.5 and 13.5 of this chapter, the authority shall determine the degree  
 18 of impairment. The PERF board shall adopt rules under IC 4-22-2 to  
 19 establish impairment standards, such as the impairment standards  
 20 contained in the United States Department of Veterans Affairs  
 21 Schedule for Rating Disabilities. The report of the examination shall be  
 22 submitted to the PERF board's director. If a fund member refuses to  
 23 submit to an examination, the authority may find that no impairment  
 24 exists. **If the local board has made a determination under section**  
 25 **12.5(b)(4) of this chapter that the fund member has a permanent**  
 26 **and total disability from a catastrophic personal injury (as**  
 27 **described in section 12.5(b)(4) of this chapter), the medical**  
 28 **authority shall determine if the fund member has a permanent and**  
 29 **total disability from a catastrophic personal injury.**

30 (d) The PERF board's director shall review the medical authority's  
 31 report and the local board's determinations and issue an initial  
 32 determination within sixty (60) days after receipt of the local board's  
 33 determinations. **If the local board has made a determination under**  
 34 **section 12.5(b)(4) of this chapter that the fund member has a**  
 35 **permanent and total disability from a catastrophic personal injury**  
 36 **(as described in section 12.5(b)(4) of this chapter), the initial**  
 37 **determination must include a determination by the PERF board's**  
 38 **director concerning whether or not the fund member has a**  
 39 **permanent and total disability from a catastrophic personal injury.**  
 40 The PERF board's director shall notify the local board, the safety board,  
 41 and the fund member of the initial determination. The following  
 42 provisions apply if the PERF board's director does not issue an initial

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determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the initial determination; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.

(3) In the case of a review initiated under subsection (b), the initial determination is the impairment determined under section 12.7(i) of this chapter.

(e) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the PERF board. If a timely written objection is filed, the PERF board shall issue the final order after a hearing. The final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination or the date the PERF board's director initiates a review under subsection (b). The following provisions apply if a final order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the chief of the police or fire department:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.

(3) In the case of a review initiated under subsection (b), the impairment determined under section 12.7(i) of this chapter is considered to be the final order.

(f) If the PERF board approves the director's initial determination, then the PERF board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the PERF

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board does not approve the initial determination, the PERF board may receive additional evidence on the matter before issuing a final order.

(g) Appeals of the PERF board's final order may be made under IC 4-21.5.

(h) The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in section 12.7(p) of this chapter.

SECTION 8. IC 36-8-8-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: **Sec. 14.5. (a) A catastrophic disability benefit shall be paid from the fund as provided in this section to each fund member:**

**(1) for whom a final determination has been issued under section 12.7 or 13.1 of this chapter finding that the individual has a permanent and total disability from a catastrophic personal injury that:**

**(A) is sustained in the line of duty after December 31, 2007; and**

**(B) permanently prevents the individual from performing any gainful work; and**

**(2) who was employed as a full-time police officer or firefighter at the time the individual suffered the disability described in subdivision (1).**

**(b) The following apply if the board determines that an individual is entitled to a catastrophic disability benefit from the fund:**

**(1) The annual amount of the individual's catastrophic disability benefit is equal to the result of:**

**(A) the salary of a first class patrolman or first class firefighter in the individual's police department or fire department for the year; minus**

**(B) the sum of the following:**

**(i) Any annual salary or wages paid (or to be paid) for the year to the individual by the individual's public safety employer.**

**(ii) The annual disability benefits paid (or to be paid) for the year to the individual by or on behalf of the individual's public safety employer or by the fund.**

**(iii) Any benefits paid (or to be paid) for the year to the individual under a disability insurance policy purchased or provided by the individual's public safety employer.**

**(iv) Any Social Security disability benefits paid (or to be**

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- 1           paid) for the year to the individual.
- 2           (2) An individual is not entitled to a catastrophic disability
- 3           benefit if the amount determined for the individual under
- 4           subdivision (1)(B) exceeds the amount determined for the
- 5           individual under subdivision (1)(A).
- 6           (3) A catastrophic disability benefit is in addition to any other
- 7           benefits payable under this chapter to a fund member.
- 8           (c) If an individual is entitled to a catastrophic disability benefit,
- 9           the benefit is payable from the date of the injury described in
- 10          subsection (a)(1) until the earliest of the following:
- 11          (1) The date the board determines that the individual no
- 12          longer suffers from a permanent and total disability from a
- 13          catastrophic personal injury that permanently prevents the
- 14          individual from performing any gainful work.
- 15          (2) The date on which the individual attains the age and years
- 16          of service necessary for the individual to receive an unreduced
- 17          annual retirement benefit from the public pension plan or
- 18          public pension fund of which the individual is a member.
- 19          (3) The date of the individual's death.
- 20          (d) A catastrophic disability benefit shall be paid each year in
- 21          one (1) annual payment.
- 22          (e) The board may at any time hold a hearing to determine
- 23          whether an individual who is receiving a catastrophic disability
- 24          benefit remains eligible under this section for that benefit.
- 25          SECTION 9. An emergency is declared for this act.

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